

MICHIGAN

COURT OF

APPEALS

Annual Report 2004

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INTRODUCTION

The Michigan Court of Appeals was created by the Constitution of 1963, Article VI, Section 1.

When it first began operation in 1965, the bench of the Court of Appeals was comprised of nine judges. As filings with the Court grew from a low of 1,235 in 1965 to a high of 13,352 in 1992, the Legislature increased the size of the bench to 12 judges in 1969, to 18 judges in 1974, to 24 judges in 1986, and to 28 judges in 1993. Originally, the Court was comprised of only three districts, with principal offices in Lansing, Detroit and Grand Rapids. The Legislature apportioned the state into four districts in the mid-1990's, and the office that is now located in Troy was opened.

In 2004, the Court had facilities in five locations across the state. About 228 employees (judges and staff) worked in these locations, linked by a statewide computer network that is supported by the Court's in-house Information Systems Department. On any given day, Court employees make close to 1,000 docket entries on the computerized case management system. At the same time, mail staff in four principal locations daily process some 225 newly filed documents for movement between offices or for docketing in the local office. Each month, attorneys in the Research Division prepare research reports in approximately 240 cases for case call, and commissioner reports in some 160 cases for motion dockets, and the judges (assisted by their judicial assistants and law clerks) release opinions in roughly 280 cases and issue dispositive orders in some 320 cases.



The people who are the Court of Appeals work hard to effectuate its mandate: "To secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties." Michigan Court Rule 1.105. That mandate drives the Court's continued evolution as a significant component of the Michigan justice system.

Sandra Schultz Mengel, Chief Clerk

Larry Royster, Research Director

IN MEMORIAM



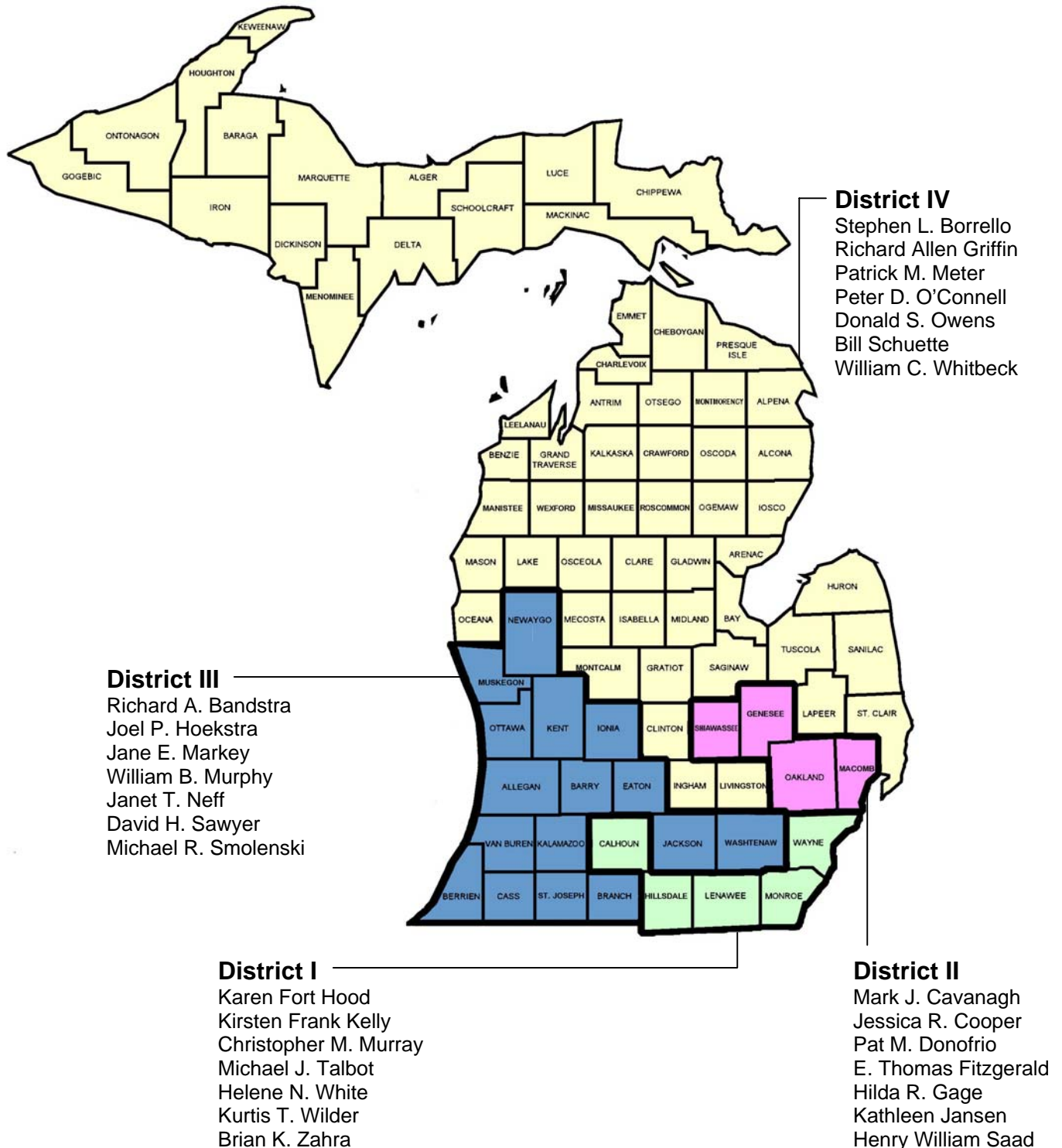
Gary B. McDonald, age 63, passed away on January 9, 2004. Judge McDonald received a bachelor's degree from University of Michigan and a law degree from Wayne State University. He distinguished himself as a practicing attorney, as a District Court judge, and as a judge of the Saginaw Circuit Court before he was appointed to the Court of Appeals in 1987 by Governor James J. Blanchard. Judge McDonald was re-elected to the Court of Appeals bench in 1988, 1994 and 2000. He resigned from the bench in January 2003 following a stroke.

JUDGES OF THE COURT OF APPEALS

Although divided into four districts for election purposes, the Court's twenty-eight judges sit in panels of three and rotate with equal frequency with each of the other judges and among the three courtroom locations (Detroit, Lansing and Grand Rapids). A decision of any panel of judges is controlling statewide and is reviewable by the Michigan Supreme Court on leave granted.

Judges Who Served in 2004	Joined the Bench	Current Term Expires on January 1 of
Whitbeck, William C., Chief Judge	1997	2011
Smolenski, Michael R., Chief Judge Pro Tem	1995	2007
Sawyer, David H.	1987	2011
Murphy, William B.	1988	2007
Cavanagh, Mark J.	1989	2009
Griffin, Richard Allen	1989	2009
Neff, Janet T.	1989	2007
Jansen, Kathleen	1989	2007
Fitzgerald, E. Thomas	1991	2009
White, Helene N.	1993	2011
Saad, Henry William	1994	2009
Bandstra, Richard A.	1995	2009
Hoekstra, Joel P.	1995	2011
Markey, Jane E.	1995	2009
O'Connell, Peter D.	1995	2007
Gage, Hilda R.	1997	2007
Talbot, Michael J.	1998	2009
Wilder, Kurtis T.	1998	2011
Zahra, Brian K.	1999	2007
Meter, Patrick M.	1999	2009
Owens, Donald S.	1999	2011
Cooper, Jessica R.	2001	2007
Kelly, Kirsten Frank	2001	2007
Murray, Christopher M.	2002	2009
Donofrio, Pat M.	2002	2011
Hood, Karen Fort	2003	2009
Schuetten, Bill	2003	2009
Borrello, Stephen L.	2003	2007

JUDGES BY DISTRICT IN 2004



ACE AWARD

On July 26, 2004, **Bobbie Dembowski** of the Clerk's Office and **Carol Abdo** of the Information Systems Department were presented with the Court of Appeals' Ace Award in recognition of their work at the Court. The Ace Award is given to outstanding individuals who are selected by the Ace Award committee of judges and administrators from among those employees who are nominated by their peers each year.



**Donald L. Byerlein
with 2004 Ace Award Winners
Carol Abdo and Bobbie Dembowski**

The Ace Award is named after Donald L. ("Ace") Byerlein, who served as court administrator from the Court's inception in 1965 until his retirement in 1997. Byerlein was known for being conscientious, dedicated, loyal, selfless, upbeat, civil, and possessed of the type of "can-do" attitude that characterizes the best employees at the Court.

Carol Abdo was honored for demonstrating these attributes in her work for the Information Systems Department. As a PC Network Support Specialist, Carol's job takes her to every corner of the Court and she is known in each office as a generous and

good-natured person who is very knowledgeable about many types of computer issues and very willing to work through the day and into the night to finish an assignment.

Bobbie Dembowski was honored for demonstrating these attributes in her work as assistant to the District Commissioners in the Lansing office. In that job, which often involves emergency filings that must be processed and resolved immediately, Bobbie is relied upon as a person who accomplishes her work with skill, professionalism, devotion to duty, and good cheer.

Prior Ace Award honorees include:

Mary Lu Hickner, Deputy Clerk – 1998
Deborah Messer, Judicial Assistant – 1999
John Pratt, Court Officer – 2000
Mark Stoddard, District Commissioner – 2001
Suzanne Gammon, Judicial Assistant – 2002
Elizabeth Gordon, Research Support – 2003

COURT PERFORMANCE

Delay Reduction Plan

In 2002, the judges of the Court of Appeals adopted a Delay Reduction Plan focused on reducing the time between filing and disposition of all cases resolved by an opinion of the Court. The Preliminary Report on Delay Reduction, as well as all subsequent Progress Reports, can be accessed on the Court's website at <http://courtofappeals.mijud.net/resources/drwg.htm>.

Cases filed with the Court of Appeals are resolved either by opinion or order. *Order cases* move quickly from filing to disposition because the dispositive orders are usually issued before the case is eligible for review by a staff attorney and for submission for oral argument before a panel of judges. *Opinion cases* move more slowly because their facts and issues are not amenable to disposition by order, and they are thus reviewed and reported on by a staff attorney and then submitted to a panel of judges for resolution by opinion.

Average time to disposition by opinion was reduced by nearly 6 months from 2001 to 2004.

For the approximately 3,100 cases disposed by opinion in 2001, the average time from filing to disposition was 653 days. Thanks to the delay reduction plan, however, the average time to disposition by opinion was 603 days in 2002, 554 days in 2003, and 494 days in 2004.

Between 2001 and 2004, average time to disposition by opinion was reduced by 159 days (nearly 6 months).

Court administrators have used various delay reduction measures to enhance the preparation and assignment of cases to panels in a manner that balances age and speed. The caseload is carefully monitored at all stages to ensure that cases move smoothly and are assigned to case call as quickly as possible after they are available. Notable changes from the more standard submission process are seen in the use of volunteer panels of judges who have agreed to take extra caseloads in some months, with some or all of the additional assignments consisting of cases presented without research reports. When extra panels have not been scheduled, regular panels have occasionally been assigned additional large cases without reports.

While fewer opinions were issued in 2004 than in the two prior years, the number still exceeded those issued in 2001 by some 9% (3,138 opinions in 2001 versus 3,424 opinions in 2003). And during 2004, the age of the pending caseload continued to decline such that 2004 closed with only 2.51% of the caseload pending for 18 months or more.

Performance Trends

2004 Clearance Rate:

103.42%

7,293 dispositions

7,055 filings

The Court of Appeals has routinely tracked two measures of performance. The first is *clearance rate*, which reflects the number of cases disposed compared to the number of cases filed. In 2004, the Court posted a clearance rate of 103.42%, disposing of 7,293 cases during the same period when 7,055 cases were filed.

The second performance measure tracked by the Court of Appeals in recent years is the *relative age* of the pending caseload. Under this measure, an 18-month standard is applied to all pending cases, with the measure reporting the percentage of pending cases that is 18 months old or younger. At the close of 2004, 97.49% of the Court's pending caseload was 18 months old or younger. By contrast, at the close of 2003 this number was 96.04%.

Age of Pending Caseload

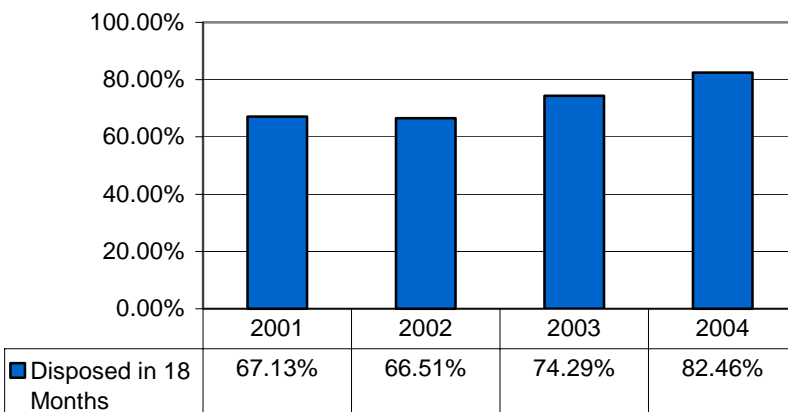
at close of 2004:

**97.49% of pending cases
were 18 months old or
younger**

To balance the picture presented by the relative age data, a third measure of performance was officially added to the Court's tracking tools in late 2003. Rather than assess the percentage of

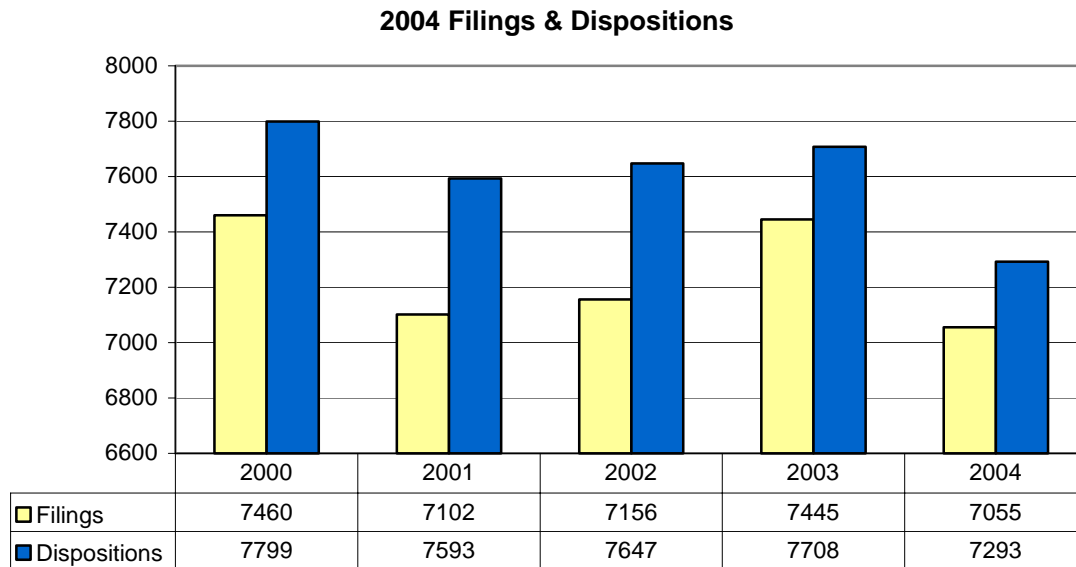
the caseload that had been pending for 18 months or less, the new measure tracks the percentage of cases that were actually disposed within 18 months of filing. In 2003, 74.29% of all opinion and order cases were disposed in 18 months or less. In 2004, 82.46% of all opinion and order cases were disposed in 18 months or less.

**Percentage Disposed in 18 Months
by Opinion or Order**

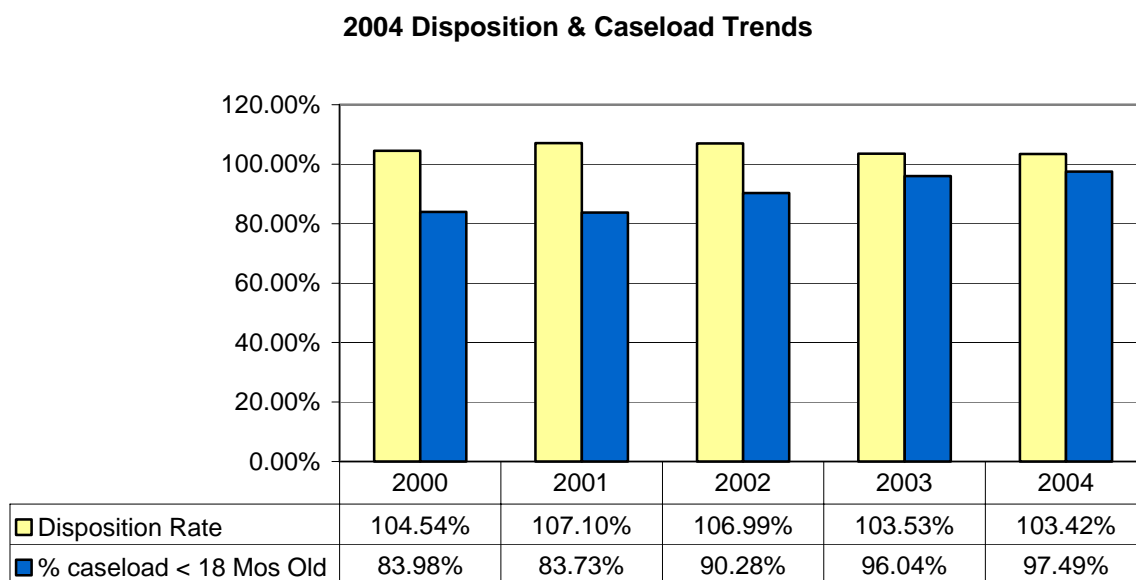


Five-Year Statistics

The following chart illustrates the Court of Appeals' performance trends for the past five years.



In 2004, filings in the Court of Appeals declined 5.24% from 2003. In the same period, dispositions in the Court of Appeals decreased 5.36%.



CLERK'S OFFICE

Dependency Appeals

During 2004, the Clerk's Office continued its special review of all cases involving termination of parental rights. This was a continuation of a project that began in September 2002 at the invitation of then Michigan Supreme Court Chief Justice Maura D. Corrigan. A preliminary report had been issued in November 2002, a final report was issued in May 2003, and a sweeping set of court rule changes were adopted by the Supreme Court, effective May 1, 2004. The reports are found at <http://courtofappeals.mijud.net/resources/dawg.htm>. The bulk of the rule changes are located in Michigan Court Rule 3.977(I).

Special focus on dependency appeals continued in 2004. Rule amendments adopted by Supreme Court were effective May 1, 2004.

Notably, the new rule directs that, for purposes of appeal of an order terminating parental rights, the trial court should appoint counsel and order necessary transcripts on a State Court Administrative Office form that then functions as the claim of appeal, similar to a process that has been used in criminal cases for many years under Michigan Court Rule 6.425(F). Using the same form to appoint counsel, order transcripts, and initiate the appeal is projected to cut more than 28 days from time to disposition, compared to past practice and procedure.

The overall goal of this project is to reduce the average time to disposition to 210 days in dependency appeals. In 2001, the average dependency appeal was disposed by opinion in 325 days. By the close of 2004, this number had been reduced to 235 days.

Delay Reduction

Various delay reduction projects and work groups continued in 2004. The internal delay reduction work group met periodically to review success rates posted under the initiatives adopted in 2002 and to chart new means of further streamlining the processing of appeals. Progress reports are found at <http://courtofappeals.mijud.net/resources/drwg.htm>.

An interdisciplinary group comprised of Court judges and administrators and State Bar of Michigan representatives that was formed at the close of 2003 continued in 2004 to investigate methods of reducing time on appeal that would not substantially shorten briefing time available

to attorneys in most appeals. The Case Management Work Group issued its report on February 17, 2004. The report can be found at <http://courtofappeals.mijud.net/resources/cmwg.htm>.

Case Management Work Group proposed expedited track for appeals from summary disposition orders.

The Case Management Work Group's report focuses on expediting appeals from orders entered in the trial court on motion for summary disposition. Following an opportunity for comment, and a public hearing, the Supreme Court issued Administrative Order 2004-5 that became effective on January 1, 2005. For a two-year project period ending December 31, 2006, appeals from

orders on motion for summary disposition will be automatically placed on an expedited track under which most such appeals should be disposed within about 180 days of filing. If transcripts are ordered, they are due in about 1/3 the usual time. If they are timely filed, a premium page rate is owed to the court reporter or recorder. Briefs on appeal are shorter and must be accompanied by copies of the motion, answer, and briefs in support from the trial court. As soon as briefing is concluded, the case is to be sent to the research division for immediate review, and then it is immediately assigned to a panel of judges for disposition. Multifaceted information about this project is at <http://courtofappeals.mijud.net/resources/9090.htm>.

2004 Appellate Bench Bar Conference

Court of Appeals judges and staff served as both presenters to and participants of the Appellate Bench Bar Conference in April 2004. This tri-annual conference featured presentations on all aspects of appellate practice, including plenary sessions on electronic filing at the Court of Appeals and on reduction of delay on appeal. The conference was sponsored by the Appellate Bench Bar Foundation, which is comprised primarily of attorneys who are in active appellate practice before the Court of Appeals and the Supreme Court. Former Court of Appeals Judge Harold Hood, who was a member of the appellate bench from 1982 to 2002, was presented with the Lifetime Achievement Award during the conference.

Electronic Case Inquiry

In October 2004, electronic case docket information became accessible on the Court of Appeals website.

The case inquiry option on the website provides instantaneous access to docket information concerning any pending or closed case that was filed since the mid-1980's. PDF copies of more recent orders and opinions are linked to the pertinent docket events for easy viewing. More information on this development can be found in the Information Systems Department section of this Annual Report.

Electronic Case Inquiry option added to website in October 2004.

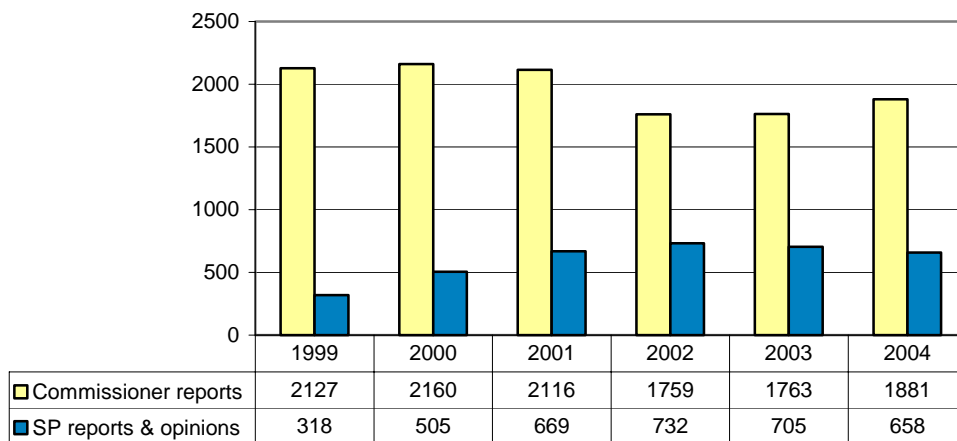
RESEARCH DIVISION

Commissioners

The Commissioners are experienced central staff attorneys whose primary functions are to prepare written reports in (1) discretionary matters such as applications for leave to appeal, (2) motions to withdraw as counsel or to remand, and (3) complaints for writs of habeas corpus, superintending control, and mandamus. The Commissioners also review incoming emergency applications and work closely with the judges to resolve priority matters on an expedited basis. Several Commissioners also prepare reports and proposed opinions in cases assigned to summary panels. The Commissioners are located in each of the four district offices—Detroit, Troy, Lansing and Grand Rapids.

In 2004, the Commissioners prepared reports in 1,881 leave applications and miscellaneous matters and 658 reports and proposed opinions in cases assigned to summary panels. The chart compares the 2004 production of both commissioner reports and summary panel reports with the production numbers from the prior five years.

Commissioner Production



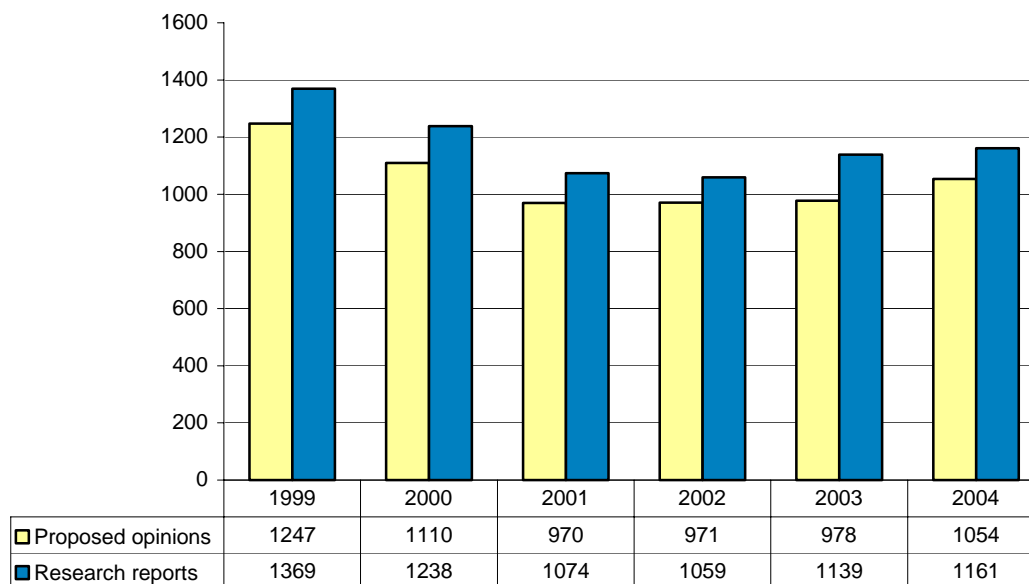
Prehearing

Prehearing attorneys are typically recent law school graduates who are hired for a period of one to three years. They prepare research reports in cases that are determined to be in the mid-range of difficulty. The reports are confidential intra-Court documents that contain a comprehensive and neutral presentation of the material facts, a recitation of the issues raised by

the parties, a summary of the parties' arguments, a thorough analysis of the law and facts on each issue, and a recommendation as to the appropriate disposition. Prehearing has offices in Detroit, Lansing and Grand Rapids.

In 2004, prehearing attorneys prepared 1,161 reports and 1,054 proposed opinions for case call. The chart below compares the production numbers of prehearing from 1999 through 2004.

Prehearing Production



	Number of PH Attorneys	Aggregate Day Eval of Cases	Average Day Eval of Cases
1999	32.6	4,948	3.61
2000	31.4	4,886	3.95
2001	29.5	4,603	4.29
2002	28.5	4,805	4.54
2003	32.0	5,108	4.48
2004	31.8	5,377	4.63

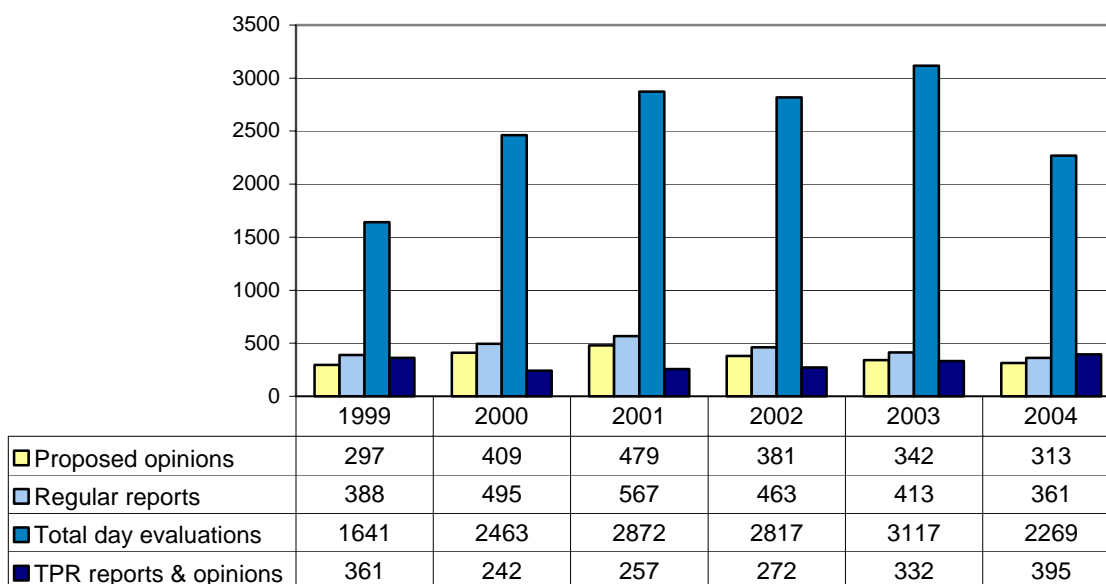
The table to the left lists the average number of prehearing attorneys on staff in 2004 compared to the previous five years, as well as the comparatives for both the aggregate and the average day evaluations of the cases in which prehearing prepared reports. For the year, twenty-eight prehearing attorneys left the Court and twenty-three new attorneys were hired.

Senior Research

Senior research is comprised of experienced attorneys whose backgrounds typically include prehearing, judicial clerkships and private practice. Unlike prehearing, the tenure of the senior research attorneys is not for a limited duration. The primary function of these attorneys is to prepare research reports in the longer or more complex cases for case call, although they also prepare reports in a significant number of termination of parental rights appeals. The content of these research reports is the same as those prepared by prehearing. The main office of senior research is located in Detroit, but several attorneys are housed in the Lansing and Grand Rapids offices.

In 2004, the senior research attorneys prepared 361 research reports (with an aggregate day evaluation of 2,269 days) and 313 opinions. The senior research attorneys and contract attorneys* also prepared reports and proposed opinions in 395 termination of parental rights appeals—a significant increase over the 332 reports and opinions prepared in 2003.

Senior Research Production



* As their title indicates, contract attorneys work for the Court on a contractual basis, preparing reports and opinions in termination of parental rights (TPR) appeals. The vast majority of the twenty-five contract attorneys previously worked for the Court in prehearing, senior research or the commissioner's office. They now work from their homes and are not otherwise engaged in the practice of law.

	Number of Sr. Research Attorneys	Aggregate Day Eval of Cases	Average Day Eval of Cases
1999	24.3	1,641	4.23
2000	23.3	2,463	4.98
2001	22.2	2,872	5.07
2002	16.6	2,818	6.09
2003	15.3	3,117	7.55
2004	13.0	2,269	6.29

The table to the left compares the staffing levels of senior research from 1999 through 2004. The table also indicates the aggregate and average day evaluations of the cases that senior research attorneys worked on over the same six-year period.

Settlement Office

The settlement office has been in operation for six years and currently consists of the settlement director and an administrative assistant. Cases for the settlement program are generally selected in one of two ways. First, certain types of cases, such as those involving personal injury (from auto negligence and otherwise), employment discrimination, and labor relations, are placed in the program automatically when the appeal is first filed. Second, the settlement director reviews the "Docketing Statements" filed early in the appeal to find other suitable cases. All totaled, about 10% of the Court's non-priority civil cases are selected for settlement conferences. The organization and operation of the program was described in a recent law review article: Ruvalo, Appellate Mediation—"Settling" the Last Frontier of ADR, 42 San Diego L R 177, 209-210 (Feb-Mar 2005).

In 2004, the settlement office continued with both the general civil and the domestic relations settlement programs. The office was successful in settling 77 of 242 cases, or 31.8% of its workload. Both the number of settled cases and the rate were slightly below those of the prior year. The lower overall rate was primarily attributable to a reduced number of domestic relations cases (designated by a DO or DM suffix) that were settled by volunteer facilitators this year. The Court is examining the possible causes for the decreased settlements in these cases and will work with the volunteer facilitators to improve this aspect of the settlement program. Excluding DM and DO cases, however, the settlement rate of all other case types was 36.1%. This is the highest settlement percentage in the program's history. The chart above summarizes the dispositions of the major case types, as indicated by lower court case type suffix.

SETTLEMENT CASES 2004			
Case Type	Settled	Not Settled	Success Rate
ALL CASES	77	165	31.8%
Major Case Types (by lower court suffix):			
CH	2	16	11.1%
CK	13	26	33.3%
CZ	7	18	28.0%
DM	6	28	17.6%
DO	2	15	11.8%
NF	2	4	33.3%
NH	6	5	54.5%
NI	12	10	54.5%
NM	2	5	28.6%
NO	14	12	53.8%
NZ	3	6	33.3%
Others	8	20	28.6%

INFORMATION SYSTEMS

DCDS

Information Systems (IS) staff helped deploy the Data Collection Distribution System (DCDS) for the Judicial Branch. DCDS is a system designed and maintained by the Department of Management and Budget to process payroll. It is used by most other State agencies for tracking time and attendance. The system allows staff to easily access their time and attendance records and allows supervisors to electronically approve them. Kathy Donovan, IS Trainer, conducted training sessions for all Court of Appeals employees as well as all Supreme Court and State Court Administrative Office staff.

Take Our Kids to Work Day

Sixty children of Court employees ranging in age from 6 to 16 participated in the first *Take Our Kids to Work Day* event held at the Court. The children learned about various job functions from people actually in those roles. For example, the Court Security Officers demonstrated how the metal detectors work, and Clerk's Office staff demonstrated how they use the time-stamp machine for new filings and offered a tour of the file and record rooms. IS participated by conducting a video conference session for the children in the Detroit, Lansing and Grand Rapids district offices. During the course of the video conference, the various job functions in IS were outlined. The children were thrilled to see themselves on "TV" which made this a very fun session for them.

The highlight of the day was the presentation of a mock oral argument in the case of *People v Mr. Sheep*, which was a take-off of *The Three Little Pigs*. Arguments in this case were presented by research attorneys before three-judge panels in Detroit, Lansing and Grand Rapids courtrooms. At the conclusion of the oral arguments, the judges graciously answered questions for the children to give them a better understanding of how decisions are made.

Staff Happenings

After almost 25 years of service to the Court, Brad Underwood, Systems Manager, retired on April 13. Brad was instrumental in the design and development of MAPPIS, the case management system used daily by judges and staff. Brad also designed the first public website for the Court of Appeals in June of 2000.

To fill the vacancy created by Brad's retirement, Andy Lee was hired as Systems Manager in June. Andy came to the Court with a B.S. in Computer Science as well as experience working in the Judicial Information Systems Department of the Michigan Supreme Court. Andy's progressive ideas for moving technology ahead at the Court are equaled by the enthusiasm he brings to the job each day.

IP Telephony

For several years, the IS department has closely monitored the evolution of a technology known as Voice Over Internet Protocol (VoIP) or IP Telephony. This technology allows telephone calls to be placed across a computer network instead of traditional telephone lines. A number of issues prompted the IS department to move ahead with the implementation of VoIP beginning in the fall of 2004. First, the existing infrastructure in the Grand Rapids office was slow and outdated. Second, the move of the Southfield offices to Troy was an ideal time to implement a new technology in that location. Third, the existing key phone switches in all offices were more than 12 years old. Finally, the projected return on investment was such that the Court could actually save money by switching to VoIP. Seventy-five percent of all long distance calls placed by judges and staff occur between the Court's own offices. Using VoIP, all those calls can be placed without charge by routing them across the data network that is already in place.

The Court selected Berbee as the vendor to help implement the VoIP system. After many long planning sessions, a design was developed to begin the deployment of VoIP at the Court. The first location to go live with VoIP phones was the new Troy office. The conversion for the other locations was slated for early 2005. Early feedback from users was very positive especially since there were many new features not available on the previous phone system. These include, a private Direct Inward Dial (DID) number for each person, call history, various ring types, and caller ID.

Relocate Southfield office to Troy

In early 2004, planning began to design a new Court of Appeals office in Troy. Information Systems staff designed and installed the cabling layout for phones, data and video. Prior to the actual move, a new router and switches were installed along with several new servers. The new IP telephones were also installed and tested. Over the course of the Thanksgiving Holiday, IS staff moved and installed 31 PCs along with the printers and fax machines.

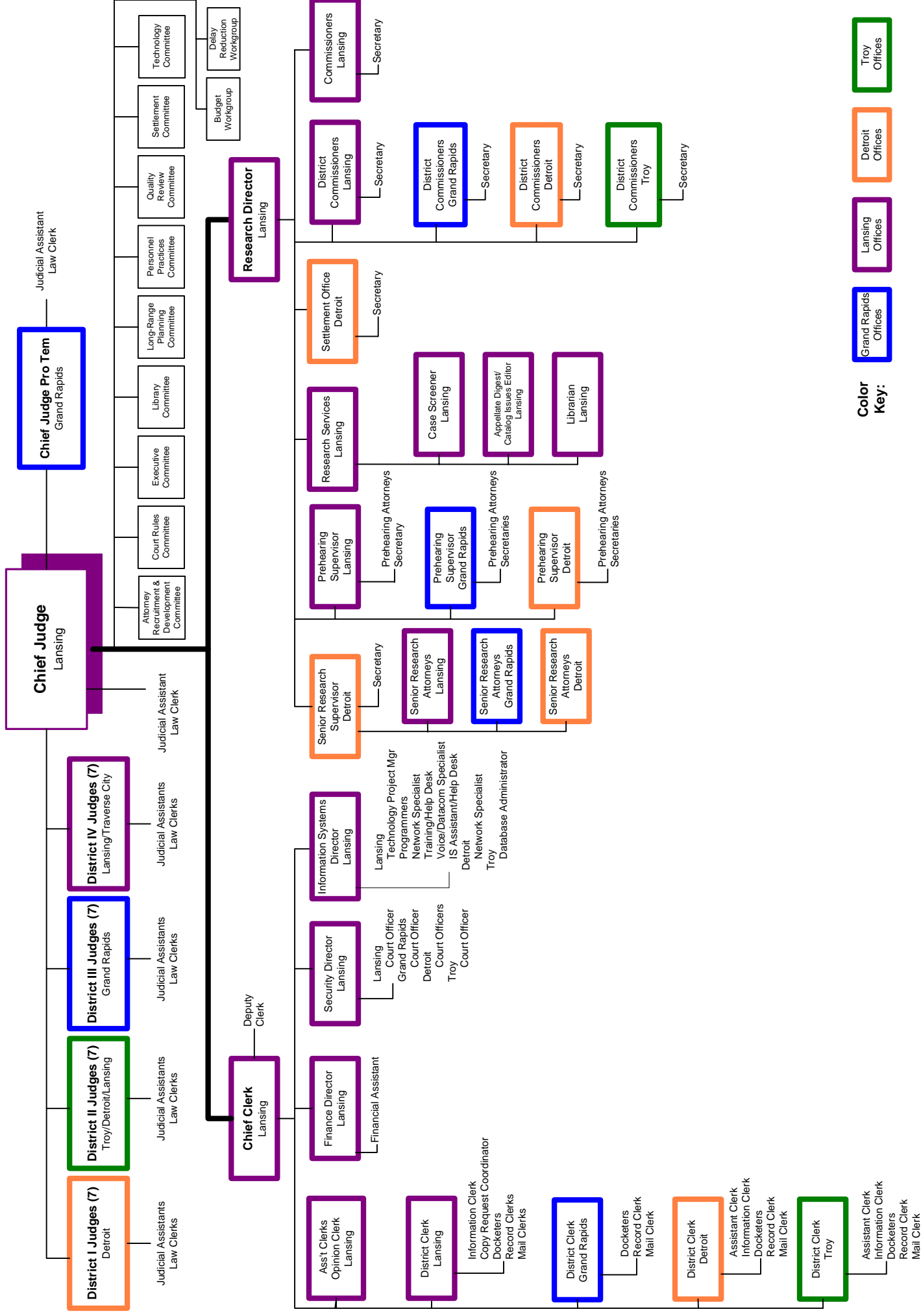
Case Inquiry

In October 2004, IS programmers launched a new case inquiry system on the Court's public website. Searches for Court of Appeals case information can be initiated by supplying a docket number, a party name, or attorney information. When searching for case information based on party name, users can search for the name of an individual or an organization. When searching via attorney information, users can specify either the attorney name or attorney bar number. With both the party and attorney inquiries, there is an option to include or exclude closed cases. The system provides case information and status for Michigan Court of Appeals cases filed from 1985 to the present. Case information is updated nightly. This much anticipated system has been very well received by the members of the bar.

E-filing

IS staff as well as key Clerk's Office staff participated in the development of a statewide efilng portal project spearheaded by the Supreme Court. IBM was selected as the vendor of choice to design and implement the system. Over the course of the year, many workshops were held to understand the business framework and requirements for the system. During these workshops a macro design was generated that provided a very high level overview of the hardware and software components necessary for the efilng portal. From there, a micro design was created that outlined the more minute detail needed for implementation. In November of 2004, the Eastpointe District Court was the first state court to go online with the new efilng portal. The Court of Appeals was slated to go online for efilng in early 2005.

December 2004



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